

Constitution simply for the purpose of defining with accuracy what had, in some respects, been left indefinite by the statute of Edward the Third. The Constitution declares that treason shall consist of only two things: the levying of war against the United States, and adhering to their enemies, giving them aid and comfort. It then provides how the crime shall be proved. In England, when the Parliament desired to reach a person who could not be reached in courts of justice by reason of failure of proof, they introduced a bill of attainder, naming the party in the bill, and tried him without the proof which would be necessary to convict him in a court of law; two witnesses under the statute of Edward the Third being necessary for conviction. Our Constitution declares that no bill of attainder shall be passed, and that the proof of treason shall consist in the testimony of two witnesses to the overt act, or confession in open court. So that if a party has committed treason there must be two witnesses to prove the same overt act; and if the party confesses to a thousand persons extra-judicially out in the street, or anywhere else, those persons cannot be called as witnesses in a court of justice to testify against him. His confession, to convict him, must be made in open court. Then, when the Constitution comes to prescribe how this treason shall be punished, they declare that the punishment shall be left to the discretion of Congress, who can provide that the punishment shall be either the taking the life of the party, or the confining him in the penitentiary, or the imposition of a fine, and such attendant circumstances of degradation as they please. But the Constitution added that the consequences of attainder which resulted at common law, the forfeiture of the estate and the corruption of the blood, should not attach to the crime of treason in this country, declaring that "no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

I will refer to one other authority, and then I will close all I have to say upon this subject. I read from Judge Tucker's Commentaries, vol. 1, page 275, of the Appendix, where he is treating upon this provision in the Constitution of the United States. He says:

"The precise definition of treason, and the limitation of it to two cases, *only*, both of which are clearly and explicitly described, at once evince the prudence, caution and wisdom [I commend these words to the consideration of this body] of the framers of the Constitution, by shutting the door (as far as human prudence, and human foresight, could provide the means of doing so) against all possible cases of constructive treason. The many infamous acts of complying Parliaments in England, during the reigns of the Tudors and other tyrannical princes, and the more infamous and detestable decisions of servile and corrupt judges, from the days of Emp-

son and Dudley to those of the execrable Jefferies, must evince the necessity and propriety of such a limitation. From such corruption and servility, either in the Legislature or in the tribunals of justice, we may reasonably hope that this clause of the Constitution will effectually guard and protect the United States. Nor should we forget that the security of the citizen is still further answered by that provision in the Constitution which declares that no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession of it in open Court. So that no extra-judicial confession, though proved by fifty witnesses, would, of itself, be evidence sufficient to convict a man upon the charge of treason. A provision which almost bids defiance to false witnesses. The abolition of forfeiture, and of the corruption of blood, in cases of treason, is moreover a happy expedient for lessening the incentives to prosecutions for treason, in corrupt Governments. Rapacity is equally the cause and effect of tyranny. To curb every pretence for the exercise of it, should be the invariable object of a people framing a Constitution. It is a monster that assumes a thousand shapes, of which the most odious, as well as the most terrible, is that in which it attacks life, liberty and property, at the same time, and with the same weapons; its power is then irresistible."

Now, if we are to listen to the teachings of the wise men who have gone before us, on this subject, if we are to listen at all to the lessons of history, it seems to me that we should leave this provision of our bill of rights precisely as the committee reported it, without change or modification in any manner whatever.

Mr. JONES, of Somerset. I desired, when the gentleman from Howard (Mr. Sands) was speaking, in order that I might understand fully the position he occupied, to inquire of him whether he proposes, by his advocacy of the amendment which the gentleman from Baltimore city (Mr. Stirling) has offered, to advocate the punishment of offences, as within our jurisdiction, those acts or similar acts whereby those have been made widows and orphans, whose lamentations have filled the land during this civil war.

Mr. SANDS. I have a very direct and plain answer to that gentleman. I propose to allow the legislative branch of the State Government, or whatever is the proper authority to legislate upon the subject, to define what treason is, to make it clear and plain; and then I propose to let the judicial department determine whether the party charged has been guilty of treason or not. All that we are doing in this article is to provide the extent of the punishment, leaving to the legislative arm of the Government the defining of treason, and to the judicial arm of Government the finding and convicting the party guilty of